

JOHN J. NORDHOFF  
DEAN KIRK

IBLA 76-187

Decided February 24, 1976

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying reinstatement of oil and gas leases NM 11346 and NM 11348.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make payment of the annual rentals on time will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Rentals -- Oil and Gas Leases: Termination

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the government.

APPEARANCES: John J. Nordhoff, Dean S. Kirk, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John J. Nordhoff and Dean Kirk appeal from the August 1, 1975, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying their petition for reinstatement of oil and gas leases NM 11346 and NM 11348. The leases terminated by operation of law for failure of appellants to pay their annual rentals on time. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). The payments were due on Monday, March 3, 1975, but were not received by the BLM until Tuesday, March 4, 1975, even though sent by appellants on Friday, February 28, 1975.

[1] The appropriate regulation, 43 CFR 3108.2-1(c), provides that petitions for reinstatement may be considered only if the petition was filed in the appropriate office within 15 days of receipt of a "Notice of Termination of Lease." The notice was sent on April 9, 1975, and received by John J. Nordhoff on April 15, 1975. The notice contained instructions with respect to petitions for reinstatement. Included in those instructions was the statement that the petition must be filed within 15 days of the receipt of the notice. A petition for reinstatement was not received until July 28, 1975, approximately 3 months after the deadline for filing a petition. Accordingly, appellants' petition for reinstatement was properly denied.

Appellants were duly notified by the Bureau that the rental payment had not been received on time and that the lease had therefore terminated. Further, this notice apprised them of their right to petition for reinstatement and explained in some detail how they might go about filing such a petition, including the requirement that such petition must be filed within 15 days of their receipt of the notice.

[2] Appellants acknowledge receipt of this notice but say that they did nothing in response to it because they knew that the Bureau had deposited their rental check and "\* \* \* therefore we felt satisfied that everything was in good order and good standing." They therefore ignored the notice until the money was refunded to them months later.

Had they inquired after receiving the notice, they would have learned that such late payments are deposited by the Bureau for good reasons. First, in order to qualify for reinstatement the statute requires that the rental must have been paid within 20 days after the due date. The money, then, is not returned by BLM immediately, but is retained on deposit so as to protect the right of the lessee to petition for reinstatement. The check or money order is deposited in an "unearned" account to safeguard the payment, to create a record

of it, and to bring the payment under accounting control. This procedure is designed to serve the payee's interest as well as the Bureau's. If a petition for reinstatement is filed, the money is retained in the "unearned" account until the matter is finally decided. If the lease is then reinstated the money is transferred to an "earned" account; if not, it is refunded to the payee. If no petition for reinstatement is forthcoming, the Bureau office must prepare a voucher and transmit it to the regional disbursing officer of the Treasury Department, who issues a check in reimbursement of the payee. This entails some delay. The depositing of the rental check in these circumstances does not signify that payment has been accepted by the Bureau, or indicate that the lease has not in fact terminated, or does it create an estoppel against the government.

Appellants misconceive what has transpired with respect to their leases. They argue that the tardiness of the payment should be excused because it was only a matter of "a hairline differential of a few hours" and "many innocent parties would be subjected to possible law suits" as the result of the decision to terminate the lease.

When payment of the annual rental is not received on or before the anniversary date, the lease is not terminated by the act, deed or decision of any federal employee. No discretion is involved. Rather, the lease terminates automatically, by operation of law, as required by the Act of July 29, 1954; 30 U.S.C. § 188 (1970), and the fact that such termination has occurred is merely noted by the Bureau officer and communicated to the lessee, as was done in this instance. John L. Stambaugh, 11 IBLA 27 (1973). A lease so terminated may be reinstated only if the terms and conditions of the statute and the pertinent regulations have been satisfied. The Secretary has no authority to waive such prerequisites. C. J. Iverson, 21 IBLA 312; 82 I.D. 386 (1975).

Therefore, pursuant to the authority delegated to the Board Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Martin Ritvo  
Administrative Judge

